IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.924 OF 2005

The State of Maharashtra ...Applicant

Versus

Jagdish Shashidhar Shetty & Ors. ...Respondents

.....

Mr.A.S.Gadkari, A.P.P. for Applicant.

Mr.S.S.Shah for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

MARCH 3, 2005.

P.C.

1. Heard Counsel for the parties.

2. This Application is for cancellation of bail granted by the Court of Judicial Magistrate, First Class, Pimpri at Pune dated 26th January 2005 in relation to offence registered with State Excise Department, D-Division, Bit No.2, Pune being C.R.No.10 of 2005. The Respondents were arrested on the night between 25th and 26th of January 2005 in connection with the said offence, which is

punishable under provisions of Section 65, 66, 81, 83 and 108 of the Bombay Prohibition Act, 1949. They were produced before the concerned Magistrate on the 26th January 2005 with application requesting for police custody. At the same time, the Respondents moved application for bail.

3. On the one hand, on the application preferred by the prosecution, the concerned Magistrate proceeded to order that the Respondents be remanded to M.C.R. till 2nd February 2005 and by a separate order passed at the same time on the application for bail preferred by the Respondents, allowed the prayer for bail. I think it apposite to reproduce the orders passed by the concerned Judge on the same day on the application filed by the prosecution as well as the bail application filed by the Respondents in its entirety. The same read thus :

"ORDER

Accused No.1 to 4 produced before me at 4.10 p.m. No Complaint of ill treatment at the hands at Police record registered,

report perused case diary heard I.O. the learned advocate for accused. It appears from the record that reasons given for P.C.R. are not sufficient. Hence, accused remanded to M.C.R. till 2.2.2005.

Sd/-
Dt.26.01.2005
(J.M.F.C., Pimpri, Pune)"

"ORDER

Received application, heard learned Advocate for accused. In view of reasons given accused be released on P.R.bond at Rs.7,000/- each and on furnishing one surety in the like amount.

Sd/-
Dt.26.01.2005

Sealed

True Copy
Sd/-
Assistant Superintendent
Civil Judge, J.D.Pimpri."

4. Admittedly, no separate reasons have been recorded while granting bail. Suffice it to observe that both the orders suffer from non-application of mind. If the Court was convinced that the Respondents ought to be released on bail, there was no reason to record that accused be remanded to M.C.R. till 2nd February 2005. On the other hand, if the Court was of the view that the accused deserved to be remanded to M.C.R. till

2nd February 2005, there was no occasion to grant bail to the Respondents. Moreover, the order as passed on the Application, to say the least, is unintelligible. It merely records that for the reasons given (by the accused), they are released on bail. That is no way of releasing the accused on bail, that too, in a serious offence. The impugned orders not only suffer from non-application of mind, but are also perverse.

5. Accordingly, both the orders passed by the concerned Magistrate on the applications preferred by the Respondents as well as the prosecution, are set-aside and instead, the Investigating agency is authorised to proceed against the Respondents in accordance with law.

6. The Respondents may be arrested forthwith and produced before the Magistrate other than the Magistrate, who had occasion to hear the earlier application for police custody and bail application, which was filed by the respective parties. The Chief Judicial Magistrate shall either hear the further applications filed in

respect of the present case himself or assign it to some other Judge, other than Smt.Surekha Patil. (Although the order which is impugned in this Application, does not indicate the name of the concerned Judge, I am informed across the bar, on instructions, by the learned A.P.P. that the same has been passed by Judge, Smt.Surekha Patil).

7. It is made clear that the Magistrate, who will be called upon to consider the further applications, to be presented by the prosecution or the accused, as the case may be, will be decided on their own merits in accordance with law, uninfluenced by any of the observations in the present order.

8. Application succeeds on the above terms.

9. Copy of this order be forwarded to the Registrar General of this Court for being placed before the appropriate authority for necessary action.

10. At this stage, Counsel for the Respondents

prays that the operation of this order be stayed. I see no reason to accede to this request.

A.M.KHANWILKAR, J.